IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Crl.MC.No. 2317 of 2007()

CC.543/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD
[CRIME NO.143/2003 OF GURUVAYOOR POLICE STATION]

.....

PETITIONER: ACCUSED

NISHA, D/O CHANDRAN,
PANTHAYI VATTAVALAPPIL HOUSE,
PANNISSERRY DESOM, AALOOR AMSOM,
THALAPPILLY TALUK.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS: STATE

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2317 of 2007

Dated this the 20th day of July 2007

O R D E R

The petitioner is aggrieved by a direction regarding disposal of property in a judgment of acquittal rendered by the learned Magistrate. The learned Magistrate had, in the said judgment of acquittal, incorporated the direction under Section 452 Cr.P.C that MO1, a gold chain is not liable to be returned to the complainant or the accused and that the same is liable to the confiscated. MO1 is a gold chain with thali. However, the learned Magistrate has directed that the thali part of MO1 shall be returned to PW1. Obviously all the witnesses turned hostile and PW1 did not support the prosecution case.

2. This Criminal Miscellaneous Case is preferred by PW1 aggrieved by the direction that the gold chain part of MO1 has not been directed to be released to her.

3. I need not express any opinion on merits of the claim. The learned counsel for the petitioner was requested to explain how, in the light of the provisions of Section 454 Cr.P.C, this application under Section 482 Cr.P.C is maintainable against the said direction under Section 452 Cr.P.C. The learned counsel for the petitioner

submits that it was not a mere direction regarding disposal of MO1; but MO1 has been treated as having two parts and one has been directed to be returned to the petitioner whereas the other, that is the gold chain part of MO1, has been directed to be confiscated.

4. Be that as it may, I am of the opinion that, that cannot make any difference in so far as the maintainability of this petition is concerned. Invocation of powers under Section 482 Cr.P.C cannot and should not normally be made if the party has an equally efficacious remedy under the Code to get his grievance redressed. I am, in these circumstances, of the view that the petitioner must have resorted to the provisions of Section 454 Cr.P.C to impugn the limited challenge against the impugned direction.

5. This Criminal Miscellaneous Case is, in these circumstances, dismissed as not maintainable. I do hasten to observe that the petitioner's right to challenge the impugned direction under Section 452 Cr.P.C by preferring an appropriate appeal under Section 454 Cr.P.C shall remain unfettered by this dismissal.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007